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ABSTRACT

This lesson examines the Hungarian system of government so that students compare that governmental system with the U.S. model. The lesson is structured with: (1) background on the parliamentarian form of government; (2) description of the judiciary in Hungary and/or the issue of local self-governments; (3) highlights on some major differences between the Hungarian/European model and the U.S. model; and (4) conclusions of the lesson. The lesson includes a listing of objectives, procedures, materials needed, and student handouts. (EH)

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Lesson Plans on Issues of the Hungarian Constitution.

by Balazs Schanda

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LESSON PLANS ON ISSUES OF THE HUNGARIAN CONSTITUTION

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1. (Notion Discussed: "Limited government")

1.1. Preview of Main Points

This lesson will examine briefly the Hungarian system of government. It will be done in a way that students have a chance to compare what they learn to the American model. This will also enable them to draw critical conclusions at the end of the class, i.e. to identify advantages and disadvantages of both political systems.

The lesson is structured as follows:

1. Background on the parliamentarian form of government

2. Description of the judiciary in Hungary *and/or* the issue of local self-governments.

3. Highlighting some major differences between the Hungarian/European and the American model.

4. Conclusions.

* * *

1.2. Connection to Social Studies

The lesson can be connected to courses in American government, especially those dealing with separation of powers, checks and balances, administration of justice and federalism.

* * *

1.3. Objectives for Students

As a result of this lesson students will

- point out to some differences in the US and to their state;
- understand the background of differences;
- be able to appreciate the most valuable achievements of the US Constitution that they would suggest following;

* * *

1.4. Suggestions for Teaching the Lesson

A. Opening the Lesson

- Introduce the topic, ask students what they know about the political changes of 1989-1990 in Central and Eastern Europe; locate Hungary on a map of Europe; find out if any of the students has Hungarian ancestors - this makes them involved.

B. Developing the Lesson

- Ask students what they think of the US governmental system in the specific issues of presidency, administration of justice, federalism. Can they imagine a different system of government?

- Describe how government is limited in Hungary - use handouts on parliamentarism.

- Ask students what they find interesting, what differences they appreciate the most in their Constitution?

- Emphasize understanding: differences are historically grown and determined.

C. Concluding the Lesson

- Summarize the major points of the lesson; underline the importance of learning about different systems, how we should learn from each other.

* * *

1.5. Background Material for the Teacher

Document: The Constitution of the Republic of Hungary;
Articles 45, 46, 48, 50, Chapter IV. (on the judiciary)
The Constitution of the Republic of Hungary;
Articles 41, 42, 43, 44/A, 44/B (on the local self-governments)

Student Handouts

Parliamentarism

Hungary, unlike the United States of America, has a parliamentarian not a presidential form of government. This means that the government has political responsibility towards the parliament and the President of the Republic has merely representational functions, but no real power. No stable government can exist without the backing of the majority of the legislature which is a one-chamber parliament (the National Assembly). This form of government has long tradition in Europe: in Hungary - like in the United Kingdom - parliament became the law maker in the Middle Ages, and the government has been responsible towards parliament since 1848.

The judiciary

In Hungary the administration of justice is practiced by ordinary courts, organized at three levels (local courts, county courts, and the Supreme Court) and by special courts established for special cases (not for a special group of people.). At the moment there is only one type of special court in Hungary, the labor court which is organized on the county level and deals only with cases of labor law (for example unfair dismissals). As in most European countries, there are no juries in Hungary, but there are two lay judges sitting in panel with the professional judge in the first instance is some types of cases. The professional judge leads the trial but the lay judges have equal rights and they have to give their vote on the case first. At juvenile courts (which are special chambers of the ordinary courts) at least one of the lay judges has to be a teacher. At the second instance (which is the county court if the case started at the local level, and the Supreme Court if the case started at the county level or a labor court) a panel of three (in very difficult cases five) professional judges sit in panel to hear the appeal. All judgments of the first instance can be appealed. An interesting difference compared to the American courts: the majority of judges are females in Hungary.

The Constitutional Court is not part of the ordinary judiciary. It has the right to decide in an abstract procedure on the constitutionality of norms: Acts of Parliament, and statutes of the central and local governments, without any previous litigation. If finding a law unconstitutional the Constitutional Court has the power to abrogate it.

Local versus central government

Hungary is a unitarian state, not a federation. The territory of Hungary consists of 19 counties and the capital, Budapest. The counties are divided into local authorities, which are administrative units and have the right of self-government

in the merits of their autonomy (Art. 44/(1) a)). There are over 3.000 local self-governments in the country: not only rural towns but also small villages constitute their own local authority. Schooling and health care are, for example, local responsibilities: the state sets the standards but it is the local community that owns and maintains the school. Local governments receive tax funding from the central budget but they have a limited taxation autonomy as well, and they have the right to run enterprises of their own.

2. (Notion Discussed: "Human rights")

1.1. Preview of Main Points

This lesson will examine briefly the role of human rights in the Hungarian Constitution. It will be done in a way that students have a chance to compare what they learn to the American notion of human rights. This will also enable them to draw critical conclusions at the end of the class, i.e. to identify advantages and disadvantages of different approaches.

The lesson is structured as follows:

1. Background on human rights in the Hungarian Constitution.

2. Highlighting some major differences between the Hungarian/European and the American model.

3. Conclusions.

* * *

1.2. Connection to Social Studies

The lesson can be connected to any course on the theory of human rights.

* * *

1.3. Objectives for Students

As a result of this lesson students will

- get a wider perspective on human rights;
- understand some differences in the notion of (universal) human rights.

* * *

1.4. Suggestions for Teaching the Lesson

A. Opening the Lesson

- Introduce the topic, ask student what they know about the political changes of 1989-1990 in Central and Eastern Europe; locate Hungary on a map of Europe; find out if any of the students has Hungarian ancestors - this makes them involved.

B. Developing the Lesson

- Describe how human rights are regulated in Hungarian law.

- Point out the importance of international obligations in the field of human rights.
- Point out the different (more liberal American versus more social European) views on the role of the state.
- Point out differences in the approaches to human rights between the two states.
- Discuss why social, cultural and economic rights are of great importance, often more in focus than the traditional rights e.g. under the US Constitution?
- Discuss what the similar developments and what the differences are in the approaches to human rights?
- Argue for and against recognizing collective group rights of ethnic minorities.

C. Concluding the Lesson

- Summarize the major points of the lesson; underline the importance of learning about different systems, summarize the background of these differences.
- What do they find interesting, what differences do they appreciate the most in their Constitution?
- Emphasize understanding: differences are historically grown and determined, however human rights are universal and their development is converging. We should learn from each other.

* * *

1.5. Background Material for the Teacher

Materials: the Constitution of the Republic of Hungary;
Articles 7, 8, 13-18, Chapter XII.

Student Handouts

Human Rights

The notion of human rights is deeply rooted in valid international law as well as in most modern constitutions. Hungary is a member of both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. The wording of the Hungarian Constitution declaring fundamental rights follows to some extent the UN Covenant on Civil and Political Rights. These and other UN human rights documents are part of the Hungarian national law since at their ratification they were passed by the Hungarian Parliament as laws. Undoubtedly, the Convention for the Protection of Human Rights and Fundamental Freedoms has the largest impact on national law. This is the human rights convention of the Council of Europe: if Hungary, as a member state, violates any provision of the Convention, the victim can take the case after the exhaustion of domestic remedies to Strasbourg: the final judgment of the European Court of Human Rights is binding the member state.

In the Constitution there are not only the political rights and freedom declared but also some social, cultural and economic rights (Art. 70/B., 70/D., 70/E., 70/F), the so called "second generation of human rights", as well as some rights of the "third generation" are mentioned e.g. the right to a healthy environment (Art. 18.). In the legal theory there is an ongoing debate on the character of the second and third "generation" of human rights, which of course has its political background too. Are these really rights, do they have a normative character or they are merely requirements or obligations of the state? It has become obvious that under special circumstances the state does have a positive, active role in ensuring human rights. Regarding, for example, a very traditional political right, the freedom of press, we can see that as long as at the printed press the state has to restrain itself, most European countries do run public broadcasting stations and the state plays an important part in the electronic mass media as a regulator and often as an owner as well. Social rights do have a legal character (even if not in the same way as traditional human rights) and as socialism emphasized state responsibility in welfare, education, health care etc. people are not keen on giving these rights up; many people have lost their feeling of security with the fall of communism, for example unemployment is a new experience of the transition. The "losers" of the changes would favor the strengthening of state engagement in economy and welfare to civic rights, some of which are not "popular" as long as one does not get in touch with law enforcement, such as the rights of the accused. The declaration of third generation rights is binding the state is some ways, as well. The Constitutional Court of Hungary ruled in a case, that the state shall not lower the standard of environmental protection if it is not inevitable for ensuring another

fundamental right or a constitutional interest. [28/1994. (V. 20.) AB] This ruling was based on the right to a healthy environment (Art. 18.).

There were several cases concerning human rights brought to the Constitutional Court. The most important decisions were made on the right to life and dignity, the right to the freedom of expression, the freedom of religion, and discrimination and privacy. In respect of the right to life, capital punishment

was ruled unconstitutional [23/1990. (X. 31.) AB] (Since then Hungary has also ratified the additional protocol to the European Convention on Human Rights and Fundamental Freedoms forbidding capital punishment). The Constitutional Court took a liberal approach to free speech.[30/1992. (V. 26.) AB] The Constitutional Court stated the neutrality of the state in matters of ideology and religion.[4/1993. (II. 12.) AB] In an interesting judgment on privacy, the "personal identification number" was declared unconstitutional. [15/1991. (IV. 13.) AB] This was a "speaking number" containing the sex and the date of birth of every citizen. It was found unconstitutional because there were not limits of its use. The state could, in principle, put together a personality profile combining different data base such as criminal record, health record, taxation data etc. Data base should have different "keys" to enter. Data protection is a "hot issue" in Hungary.

Hungary has a predominant ethnic majority of Hungarians (98%). However, as ethnic tensions are rising in the region and over three million ethnic Hungarians live in neighboring countries, Hungary strives to show a good example by fulfilling the desires of its minorities and ensuring them a wide group autonomy.

3. (Notion Discussed: "Rule of Law")

1.1. Preview of Main Points

This lesson will examine briefly the importance of the principle of rule of law in the transition into democracy.

The lesson is structured as follows:

1. Background on the meaning of the principle of rule of law.

2. Description of the importance of the principle of rule of law in the transition to democracy in Hungary.

3. Arguing for and against retaliation of communist crimes.

4. Conclusions.

* * *

1.2. Connection to Social Studies

The lesson can be connected to courses on fundamental legal principles, and classes examining politics in countries overcoming a revolution or a transition.

* * *

1.3. Objectives for Students

As a result of this lesson students will

- point out to some differences in the US and to their state;
- get a deeper understanding what rule of law means;
- get a deeper understanding on the problems with overthrowing lawfully an unlawful regime (think about a possible future in Cuba!)
- be able to appreciate the most valuable achievements of the US Constitution that they would suggest following;

* * *

1.4. Suggestions for Teaching the Lesson

A. Opening the Lesson

- Introduce the topic by asking students what they know about the political changes of 1989-1990 in Central and Eastern Europe; locate Hungary on a map of Europe; find out if any of the students has Hungarian ancestors or such fled from any communist country or other dictatorship - this makes them involved.

B. Developing the Lesson

- Describe what rule of law means in Hungary.
- Point out the importance of this principle on the example of the retaliation-case.
- Let students argue at both sides of the issue of retaliation: is justice and the moral foundation of the transition not at least as important as the protection of communist criminals?
- Appreciate the importance of the rule of law principle in the transition from communism to democracy.

C. Concluding the Lesson

- Summarize the major points of the lesson;
- Underline the importance of the rule of law - respect different moral views but defend the rights of everyone.

* * *

1.5. Background Material for the Teacher

The Constitution of the Republic of Hungary; Articles 2, 55, 57, Constitutional Court of the Hungarian Republic Resolution No. 11/1992. (III. 5.) AB, especially chapter III and IV of the reasoning.

Student Handouts

The Rule of Law

Hungary is a state under the rule of law according Art. 2. (1) of the Constitution. Some other provisions of the Constitution relate to the principle of rule of law as well, such as the basic principles of criminal justice, the presumption of innocence (Art. 57. (2)). The principle of rule of law got a wide interpretation by the Constitutional Court. Since 1990 the Constitutional Court have abrogated about 50 laws and statutes with the argument that they violated the principle of the rule of law. In some of these cases the reference to the principle of rule of law is concurring with other provisions of the constitution.

Justice is regarded as a part of the rule of law. The most important elements of the rule of law are the stability of law and the legal certainty. There were several acts of parliament declared unconstitutional because they did not comply with the provisions on law making, or they set obligations retroactive or did not leave enough time to prepare for the new circumstances. Most of these cases had background issues of taxation, cutting of social benefits and social security benefits. [for example: 43/1995. (VI. 30.) AB] It violated the rule of law provision of the constitution for example if the law withdrew immediately various social security benefits not leaving time for appropriate preparation for the changes. Earlier there were attempts for the retaliation of crimes committed by communists that were not persecuted by the communist regime. In these cases he rule of law was regarded prevailing over justice: the period of limitation has to be respected also in cases when there has been no persecution for political reasons. This is a perfect example of the legal transition in Hungary: it was not a revolution that overthrew communism, but a constitutional transition.

Hungary used to have an unwritten constitution similar to that of the United Kingdom, consisting of several Acts of Parliament and a great deal of legal-constitutional traditions. When communists came to power, they passed a written constitution in 1949. This constitution was modified several times and a general revision took place in 1989-1990. On the one hand we regard the constitution as a new one, on the other hand as a provisional one. Preparations to pass a new constitution are in progress. The new text should be more precise but no structural changes in the content are foreseen. A significant change regarding the communist

experience is that the constitution has become a part of everyday life, in debates constitution and constitutionality have become major arguments.